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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

\* \* \* \* \*

THE ESTATE OF JESSIE MILLER,  
by Robert Bertram, Special Administrator

and

WESLEY STEWART (a minor) and  
NAKITA FALKENSTEIN (a minor)

Plaintiffs,

-vs-

Case No. 10-CV-807-WMC

RYAN TOBIASZ, OFFICER BATH,                   Madison, Wisconsin  
OFFICER HERBRAND, CAPTAIN                   November 21, 2012  
JOHNSON, OFFICER MILLARD,                   9:00 a.m.  
JANEL NICKEL, OFFICER QUADE  
and SERGEANT SEVERSON,

Defendants.

\* \* \* \* \*

STENOGRAPHIC TRANSCRIPT OF TELEPHONIC MOTION HEARING  
HELD BEFORE CHIEF JUDGE WILLIAM M. CONLEY,

APPEARANCES:

For the Plaintiff:   Gende Law Offices, S.C.  
                          BY:   JAMES GENDE, II  
                                  CHRISTOPHER KATERS  
                                  N28 W23000 Roundy Drive, Ste. 200  
                          Pewaukee, Wisconsin 53072

For the Defendants: Department of Justice  
                          BY:   RICHARD BRILES MORIARTY  
                                  17 West Main Street  
                                  Madison, Wisconsin 53703

Lynette Swenson   RMR, CRR, CBC  
Federal Court Reporter  
U.S. District Court   120 N. Henry St., Rm. 520  
Madison, WI 53703   (608) 255-3821

1 THE COURT: Hello. This is Judge Conley. I am  
2 calling Case Number 3:10-CV-807. The Estate of Jessie  
3 Miller versus -- I should say *The Estate of Jessie*  
4 *Miller, et al. v. Ryan Tobiasz, et al.* And I'll hear  
5 appearances for the plaintiff.

6 MR. GENDE: Morning, Your Honor. James  
7 Gende --

8 THE COURT: I'm sorry, the sound wasn't quite  
9 up. James Gende. And was there someone else?

10 MR. KATERS: Christopher Katers. K-a-t-e-r-s.

11 THE COURT: Very good. And for the defendants.

12 MR. MORIARTY: Richard Briles Moriarty for the  
13 defendants. Nanette Scheel, a paralegal is also  
14 present.

15 THE COURT: Very good. I have before me a  
16 motion for protective order, and we'll style that as a  
17 general motion, as well as a motion for protective order  
18 regarding the Michlowski deposition. I'm going to take  
19 up the first of those motions, the general motion, and  
20 then we'll talk about Mr. Michlowski's specific  
21 situation.

22 I will start with the plaintiff who has brought  
23 this motion and simply say that -- I'm sorry, the  
24 defendant who has brought the motion --

25 MR. MORIARTY: Thank you.

1           THE COURT:  -- and simply say that I am having  
2   trouble because you've given me but one example of a  
3   subject matter that you need protection from and I don't  
4   think I agree with the example, and that is with respect  
5   to discovery on policies and procedures that are in  
6   place with regard to suicidal subjects.  My problem with  
7   the specific example is that I would think it would be  
8   appropriate at this point, given that the Seventh  
9   Circuit has confirmed, that we need to understand the  
10  circumstances surrounding the choices or the decision --  
11  the choice to act or not to act by the defendants in  
12  order to understand whether they acted with deliberate  
13  indifference toward the -- towards Jessie Miller.  And I  
14  will hear from the defendant on that subject.

15           MR. MORIARTY:  Okay.  Thank you, Your Honor.  
16  The policies and procedures one I think you are  
17  referencing is in -- is that the one in the Michlowski  
18  notice?  All policies and procedures related to inmates  
19  at risk of suicide at the Wisconsin Resource Center?

20           THE COURT:  Well, we'll come back to that.

21           MR. MORIARTY:  Oh, okay.

22           THE COURT:  I'm talking about generally that's  
23  the only example I have of something that you believe  
24  would go beyond the scope.  You're past the point of  
25  arguing for general protections from discovery.  If you

1 weren't past it with this Court's decision, you're  
2 certainly past it when the Seventh Circuit affirmed this  
3 Court's decision. And when I read your general motion  
4 is that except for asking the very specific question  
5 what did you know and when did you know it, there are no  
6 subjects which are appropriate for discovery and that's  
7 -- that's not only going to prevail, it's going to get  
8 you sanctioned.

9 MR. MORIARTY: Your Honor, the defendants  
10 definitely have understood since the remand that some  
11 discovery would occur. Our point is that the Court had,  
12 in its September 11th order, indicated discovery is  
13 stayed except as is necessary to resolve the qualified  
14 immunity issues.

15 THE COURT: And then I went on to explain that  
16 it's hard to think of an area with respect to the facts  
17 surrounding this death that wouldn't be appropriate  
18 subject matter and the burden would be on you to  
19 identify it. And yet I'm presented with a 30-page brief  
20 which doesn't identify a single example.

21 MR. MORIARTY: I apologize if I've been -- I  
22 have not been precise, Your Honor. Let me try and do  
23 that here. In, for example, the October 22nd Second  
24 Request to Produce, they are asking for all emails  
25 referencing Jessie Miller for the 30 days prior to his

1 death and up -- after his death up until the notice of  
2 claim was filed. Now what we're talking about is the  
3 scope of proper discovery here. I'm looking at  
4 depositions that are being scheduled and notices that  
5 are being scheduled and what is being conveyed is that  
6 the plaintiffs are going to be seeking a broad range of  
7 discovery without focusing on what's necessary to  
8 resolve the qualified immunity issues.

9 For example, let's just assume that there's some  
10 emails that went back and forth at Wisconsin Resource  
11 Center, never got shared with CCI; emails went back and  
12 forth at CCI, were never shared with any of the  
13 defendants; how could that conceivably be, in my view,  
14 necessary to resolve the qualified immunity issues?

15 They're asking also for emails exchanged between  
16 participants of the mortality review. Well, that's --  
17 we have a confidential mortality review. None of the  
18 defendants were involved in that. Mr. Gende knows that.  
19 It's -- it does seem to me that what we're looking at is  
20 a discovery situation that is way beyond what is  
21 appropriate.

22 Now I understand the Court, and I may disagree on  
23 what those limits are, but the Court did indicate that,  
24 and I think appropriately so, that discovery was to be  
25 limited to what is necessary to resolve the qualified

1 immunity issues. If -- I did see in the Court's order  
2 where you're saying well, essentially whatever is out  
3 there in liability could be encompassed. If, in fact,  
4 that's going to be the Court's order, then we would have  
5 a major disagreement which might require further action.  
6 But if we had -- let me pick out an example there.

7 If we did not have qualified immunity involved in  
8 this case at all, Mr. Gende could proceed with all sorts  
9 of discovery in all sorts of ways that would be  
10 completely unassociated with the actual suggested  
11 knowledge of any defendant and the -- and what actions  
12 they took so long as it could lead to relevant  
13 information. That would be the general standard.

14 In the qualified immunity setting, as we have put  
15 forth in the brief, it is required by Supreme Court  
16 authority that discovery be targeted, and so it cannot,  
17 on its face, in my view, if it's targeted, it can't be  
18 the same as the scope of overall liability discovery.

19 THE COURT: I would agree with you if the  
20 targeting had to do with damages. But right now we're  
21 trying to decide on liability and the standard in  
22 discovery is what information may lead to admissible  
23 evidence. Your position -- even if I were to think  
24 there were merit in it, and there may be with regard to  
25 specifics, which I've yet to hear, but we'll come back

1 to that.

2 MR. MORIARTY: Okay.

3 THE COURT: Your position, which is simply  
4 we're not going to allow discovery until we agree on the  
5 exact parameters of that discovery, would halt virtually  
6 all discovery in all cases. It is obstructionist and I  
7 am going to sanction the defendants, but before I get to  
8 the sanction, I need to set parameters which you should  
9 have set by stating specific objections to individual  
10 questions.

11 Let's take the general example that you've given.  
12 Emails 30 days before 30 days after. I assume that  
13 isn't all emails that were sent within the Division of  
14 Corrections. Correct?

15 MR. MORIARTY: It says "produce all emails  
16 and/or documents, files, records or other documents  
17 referencing Jessie Miller for the 30 days prior to his  
18 death and after the death up until the notice of claim  
19 was filed on October 16th, 2009." And then it goes on  
20 to talk about the mortality review. There is no  
21 restriction at all --

22 THE COURT: Well Counsel, there is a  
23 restriction and it has to do discussing Jessie Miller.

24 MR. MORIARTY: Right. Yes.

25 THE COURT: Now let's just take the 30 days

1 before. What is your objection to producing all emails  
2 that were produced with respect to the deceased Jessie  
3 Miller before his death?

4 MR. MORIARTY: Well, that encompasses  
5 potentially all emails that are not just at the  
6 Department of Corrections, but the Department of Health  
7 Services. It is directed -- there is a limitation in  
8 that it is directed towards the defendants, who have a  
9 limited amount of ability to get emails. But the way  
10 it's framed conveys that the plaintiffs intend to have a  
11 very broad scope.

12 The --

13 THE COURT: Mr. Moriarty.

14 MR. MORIARTY: Yes.

15 THE COURT: You put your clients and yourself  
16 behind the eight ball by taking the position that you've  
17 taken because not only have you delayed reasonable  
18 discovery, that is to say all emails related to Jessie  
19 Miller 30 days before his death, but now you've put me  
20 in the position where I have to order that you do it on  
21 an expedited basis.

22 MR. MORIARTY: Your Honor --

23 THE COURT: No, let me finish.

24 MR. MORIARTY: Sorry.

25 THE COURT: The government has difficulty



1 producing these kinds of documents even within the  
2 normal time frames and now you're going to have to tell  
3 me, because I am going to order that you produce all  
4 such documents, that you can't possibly pull all those  
5 documents together.

6 What efforts have you made to gather responsive  
7 documents in the 30 days before death?

8 MR. MORIARTY: Your Honor, might I say what  
9 I've been referencing is not yet due. No response is  
10 yet due.

11 THE COURT: Right. But when is it due?

12 MR. MORIARTY: It is due on Monday.

13 THE COURT: And do you have it all gathered?

14 MR. MORIARTY: We do have our materials -- we  
15 are in the process of finalizing our materials as we  
16 can, as it is directed, and we intend to respond  
17 appropriately to those issues.

18 THE COURT: And Mr. Moriarty, with respect to  
19 -- with respect to the 30 days before, are you producing  
20 all responsive documents?

21 MR. MORIARTY: We are producing all responsive  
22 documents to the extent that the defendants are obliged  
23 to do so.

24 THE COURT: And by defendants --

25 MR. MORIARTY: We do that without objection,

1 Your Honor.

2 THE COURT: And by defendants, you mean only  
3 those specifically named defendants.

4 MR. MORIARTY: That's what the -- yes. Those  
5 are the defendants in the case. Those are the people to  
6 whom the requests are directed. Those are the people  
7 over whom the Court has authority. And those are the  
8 people as to whom we will be responding.

9 THE COURT: All right. What about 30 days  
10 after? You obviously are going to object to the  
11 mortality review. What about other documents that were  
12 created, emails that were created after the fact?

13 MR. MORIARTY: As -- again, we plan -- our plan  
14 is to respond, to the extent that these defendants have  
15 the capability of responding. And frankly, I haven't  
16 framed the exact nature of the response and didn't  
17 expect to have -- to be defining that right now. But --

18 THE COURT: Well, do you understand my  
19 frustration as a court who is required to push discovery  
20 to completion on a timely basis with being presented  
21 with broad principles at a time when we need to get to  
22 the nuts and bolts of discovery?

23 MR. MORIARTY: I do, and that, Your Honor, with  
24 respect, is exactly what I'm trying -- I've been trying  
25 to do. I apologize if I've not done it well. I do

1 think we need to get to the nuts and bolts of the  
2 discovery issues here and what I had perceived, as I  
3 tried to convey through on my submissions, was that we  
4 were getting a broad ranging, unfocused, untargeted  
5 approach towards discovery from the plaintiffs and that  
6 we needed court guidance on where we were going,  
7 certainly before we started in on depositions.

8       Again, I apologize if the Court perceives it  
9 differently, but what I perceived was a number of  
10 messages from the plaintiffs. We don't see ourselves as  
11 bound at all, and in fact they conveyed we are doing  
12 discovery to try to find evidence that other dismissed  
13 defendants had notice, which is entirely separate from  
14 the qualified immunity issue and anything that's  
15 appropriate on qualified immunity. But they conveyed  
16 that that's part of their purpose and what they intend  
17 to pursue.

18       THE COURT: And my problem, Mr. Moriarty, is  
19 that general principle may be the case, but there's  
20 going to be overlap between the two. For example,  
21 policies and procedures that are in place. Your clients  
22 may say one, they weren't aware of what those policies  
23 and procedures were; two, those policies and procedures  
24 were followed; three, those policies and procedures  
25 don't apply. But we need to know what the policies and

1 procedures were with respect to these defendants.

2 MR. MORIARTY: I understand, Your Honor, and  
3 I'm sorry. Now I'm understanding where the confusion  
4 lies.

5 I believe you're looking at the plaintiffs' first  
6 set of discovery requests. We responded fully to those  
7 first set of discovery requests, providing all of those  
8 policies and procedures. Those have already been given  
9 to them. October 22nd. Before the due date. And that  
10 was without objection. We responded fully to the  
11 plaintiffs' first set of discovery requests, including  
12 those policies and procedures. Even though there were  
13 questions and requests in there that in our view went  
14 beyond the proper scope of qualified immunity, we raised  
15 no objections whatsoever. We responded fully.

16 I don't know if that changes the way the Court is  
17 looking at it, but that -- we're not -- we already --  
18 there is no discovery that has been delayed by the  
19 defendants at all. We have been proceeding first off  
20 with responding fully to the first set of discovery  
21 requests.

22 Second. We got -- we have now a second set of  
23 discovery requests and two more that the Court isn't  
24 even aware of. We intend to respond on a timely basis  
25 to each of those discovery requests. We were asked to

1 set depositions, to arrange for depositions. We made  
2 those arrangements, and we went through a lot of effort,  
3 came up with available dates, presented them to counsel,  
4 and now we have depositions set.

5 We have problems with the messages that have been  
6 sent and the potential scope and that's why we brought  
7 it to the Court's attention before things exploded,  
8 because I perceived explosions coming up during the  
9 depositions themselves primarily, but we have complied  
10 fully with discovery requests and haven't delayed  
11 anything.

12 THE COURT: Very good, Mr. Moriarty. I'm  
13 delighted to hear it. Then your general motion with  
14 respect to your roman numeral I for the Court to  
15 prophylactically set the limit of scope of disclosure  
16 and discovery to certain matters and prescribed  
17 discovery methods will be denied. The Court is  
18 available on very short notice to address unreasonable  
19 specific positions by either side. I deny it not  
20 because there are no limits to discovery, but because I  
21 am not going to rule on a hypothetical.

22 If and when you get to specific problems, the Court  
23 is readily available. You should call my chambers. I  
24 will make myself available and we will quickly dispatch  
25 any individual problems that may present themselves for

1 discovery.

2 Now, as to roman numeral II, which is a request to  
3 address the location of depositions, when you said,  
4 Mr. Moriarty, that you set -- you established dates for  
5 the depositions, where were you proposing? And I don't  
6 mean generally, I mean very specifically where were you  
7 proposing they take place?

8 MR. MORIARTY: Thank you. Our proposal is that  
9 each deponent --

10 THE COURT: Don't tell me where they're  
11 located. Tell me exactly where the depositions were  
12 located.

13 MR. MORIARTY: All right. There is on file,  
14 I'm trying to get to it, a document that has the  
15 location.

16 THE COURT: Well, let's take a specific  
17 example. With respect to Mr. Tobiasz.

18 MR. MORIARTY: Yes.

19 THE COURT: Where were you proposing his  
20 deposition be taken?

21 MR. MORIARTY: At Columbia Correctional  
22 Institution at Portage, Wisconsin where he is working.  
23 The reason --

24 THE COURT: Hang on, Mr. Moriarty. We're  
25 almost there. You've almost given me the answer we're

1 looking for.

2 MR. MORIARTY: Waupun. Waupun. I'm sorry.

3 THE COURT: Where at Waupun? The Court is  
4 familiar with that facility.

5 MR. MORIARTY: It would be -- I don't know that  
6 we have the exact room within Waupun, but it would be --

7 THE COURT: Well, tell me between the lockdown  
8 area and the area generally available, where would it be  
9 located?

10 MR. MORIARTY: As far as I'm aware right now,  
11 Your Honor, and I have limited knowledge because I can't  
12 say for sure, I haven't gotten that, but my  
13 understanding from prior experience is is that it would  
14 be a conference room outside of the locked -- excuse me.  
15 Can I just check with that Nanette and she has some  
16 knowledge of that.

17 THE COURT: I would appreciate it.

18 MR. MORIARTY: Thank you. Nanette is going to  
19 tell you what she recalls from prior times.

20 THE COURT: Very good.

21 MS. SCHEEL: As soon as you walk into the  
22 facility, Your Honor, you walk up two flights of stairs  
23 and the conference room is right on that level.

24 THE COURT: So they're not going through any  
25 security.

1 MS. SCHEEL: No. And that's typical for going  
2 into a correctional institution, you don't --

3 THE COURT: No, no. Thank you very much for  
4 your answer. I know what's typical. I just wanted an  
5 answer.

6 MR. MORIARTY: Thank you.

7 THE COURT: Thank you. Now with respect to the  
8 plaintiff, I'll hear from you why -- well, actually I  
9 guess, Mr. Moriarty, are you proposing that the  
10 plaintiffs go hither and now to each of the institutions  
11 to take these depositions?

12 MR. MORIARTY: That is the proposal that we --

13 THE COURT: Well, that's absurd and it's  
14 offensive and it's not going to be required of the  
15 plaintiff. If you want to gather people in a central  
16 location, that's reasonable. But you know, there's got  
17 to be some limit -- having qualified immunity doesn't  
18 mean that you get to put the plaintiffs through every  
19 hoop. It doesn't change the basic nature of discovery  
20 and it doesn't make your defendants subject to a special  
21 set of discovery rules, which is what you're suggesting.

22 Now, I'm somewhat sympathetic to the notion they  
23 have all to traipse down to Milwaukee for these  
24 depositions because there is some reasonable position  
25 that ought to be reached by the parties and I'm shocked



1 that I'm sitting here spending my day discussing  
2 something that should have been resolved by the parties.

3 So I will turn to the defendants -- I'm sorry, to  
4 the plaintiff and ask do you have some compromise  
5 position? Because your position of asking them all to  
6 come to Milwaukee to be deposed is not something the  
7 Court is prepared to answer, notwithstanding the fact  
8 that it arguably is within the 100 miles that you're  
9 entitled to insist upon in ordinary discovery.

10 MR. GENDE: Thank you, Your Honor. James Gende  
11 on behalf of plaintiffs. We have offered several  
12 compromises to Mr. Moriarty's clients.

13 THE COURT: So why don't you offer one now to  
14 the Court so we can get moving.

15 MR. GENDE: Okay. I suggested that for any  
16 high level officials we would go to Madison and handle  
17 it at Mr. Moriarty's office.

18 THE COURT: All right. All depositions of the  
19 defendants in this case will be handled in Madison at  
20 the Attorney General's Office. That's the Court's  
21 order.

22 Now I believe then that addresses roman numeral II  
23 of the general motion for protective order. Anything  
24 further, Mr. Moriarty, with respect to your general  
25 motion that you believe the Court has not addressed?

1           MR. MORIARTY: I believe the Court has  
2 addressed what I have raised, yes.

3           THE COURT: All right. I will sanction the  
4 defendants \$100 for bringing this general motion without  
5 focus to the specific disputes in this case. There is  
6 nothing unusual about these basic disputes. There  
7 should have been a compromise reached by the parties.  
8 While I think the defendants may have been acting in  
9 good faith, it was obstructionist and they should be  
10 sanctioned, if for no other reason than I'm sending a  
11 message to both sides that I do not expect this kind of  
12 lack of cooperation to continue and both sides will be  
13 subject to additional monetary sanctions if it  
14 continues.

15          Now, as to the motion for protective order  
16 regarding Michlowski's deposition, tell me exactly what  
17 it is that you're asking the Court for, Mr. Moriarty.

18          MR. MORIARTY: As to Dr. Michlowski, he is a  
19 dismissed defendant, a nonparty, who was and remains at  
20 Wisconsin Resource Center, a separate department from  
21 the Department of Corrections. He is not -- both the  
22 notice and the subpoena convey that plaintiffs intend to  
23 pursue a lot of information that has -- and I appreciate  
24 the Court's order and I'm not going to belabor that, but  
25 when you are seeking to depose a doctor at a separate

1 institution run by a separate department and require him  
2 to produce all policies and procedures related to  
3 inmates at risk of suicide at the WRC at any time, going  
4 way back in time, any documents including emails  
5 exchanged between yourself and any other person besides  
6 an attorney as it relates to Jessie Miller at any time,  
7 and Jessie Miller was at WRC for quite a long time, well  
8 over a year, it appeared to us that this deposition was  
9 far beyond appropriate limits in this qualified immunity  
10 setting.

11 THE COURT: All right. Mr. Gende, why do you  
12 need this deposition at this time? And why would it  
13 encompass all procedures at a facility that was not the  
14 location of the suicide?

15 MR. GENDE: Thank you, Your Honor. We withdrew  
16 that request on all policies and procedures in an  
17 attempt to compromise the discovery disputes that  
18 Mr. Moriarty had raised. We substantially reduced our  
19 requested emails regarding Jessie Miller, and I believe  
20 it's in an email that may be before the Court. I think  
21 we wanted emails, again, 30 days before and his attempts  
22 to communicate -- I'm sorry, Michlowski's attempts to  
23 communicate his understanding of Jessie Miller's serious  
24 medical condition, suicidal tendencies and self-harming  
25 behavior. He indicated in chart notes before transfer

1 that Jessie Miller should be watched. We'd like to talk  
2 to him about who he spoke with at the facility.  
3 Apparently there were some phone calls made between WRC  
4 and CCI staff.

5 THE COURT: All right. Mr. Moriarty. Sounds  
6 extremely reasonable to me. What about to you?

7 MR. MORIARTY: All right. If it is limited to  
8 communications between Dr. Michlowski and people at  
9 CCI --

10 THE COURT: No, no. That's not how this is  
11 going to happen.

12 MR. MORIARTY: All right.

13 THE COURT: If you want to insert an  
14 objection --

15 MR. MORIARTY: Um-hmm.

16 THE COURT: -- during the deposition because  
17 something has gone beyond the scope of discovery, you  
18 may do so and you will suffer the consequence if you are  
19 viewed by this court to be obstructionist. But I've  
20 just been told that they offered to narrow their  
21 discussion, and it seems eminently reasonable to me.  
22 It's been represented to me that they did so in writing,  
23 and I am having trouble understanding why we are not  
24 proceeding with discovery at this point.

25 MR. MORIARTY: Understood, Your Honor.

1 THE COURT: All right. This motion is also --

2 MR. MORIARTY: Your Honor, might I --

3 THE COURT: No, you may not. This motion is  
4 also denied and the deposition of Dr. Michlowski will go  
5 forward subject to the general rules of discovery as to  
6 relevance.

7 Now Mr. Moriarty, you're free to draw the line  
8 where you think it applies as to good faith, but you do  
9 so with an obligation as a court officer not to obstruct  
10 reasonable discovery and a basis for objection is not  
11 that this might lead to liability for others. It's that  
12 it doesn't relate to the potential lack of good faith;  
13 i.e., deliberate indifference from or by the defendants  
14 in this case.

15 Now Mr. Moriarty, do you have anything further for  
16 the Court today?

17 MR. MORIARTY: No, Your Honor. Thank you.

18 THE COURT: Mr. Gende, please don't  
19 misunderstand the Court's rulings today. While I have  
20 been hard on Mr. Moriarty because I am being asked to  
21 rule on hypotheticals and draw lines that cannot be  
22 drawn because they implicitly involve gray areas, I am  
23 not giving the plaintiffs *carte blanche* to ask anything  
24 and everything they may think of, and certainly not to  
25 get into damages questions or to go beyond the scope of

1 what these defendants knew or should have known, whether  
2 it was with respect to policies or procedures or with  
3 respect to the circumstances surrounding the suicide  
4 that is the subject of this matter.

5 Are we clear?

6 MR. GENDE: Crystal.

7 THE COURT: Very good. Then I thank you all  
8 and I anticipate cooperation by both sides going  
9 forward. But I am available on short notice should  
10 someone deem it necessary to involve the Court further.  
11 Thank you all.

12 MR. MORIARTY: Thank you, Your Honor.

13 (Proceedings ended at 9:33 a.m.)  
14

15 \* \* \* \* \*

16 I, LYNETTE SWENSON, Certified Realtime and Merit  
17 Reporter in and for the State of Wisconsin, certify that  
18 the foregoing is a true and accurate record of the  
19 proceedings held on the 21st day of November 2012 before  
20 the Honorable William M. Conley, Chief Judge for the  
Western District of Wisconsin, in my presence and  
reduced to writing in accordance with my stenographic  
notes made at said time and place.  
Dated this 26th day of November 2012.

21

22

23 /s/\_\_\_\_\_

24 Lynette Swenson, RMR, CRR, CBC  
25 Federal Court Reporter